THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.27930 of 2005

Date:29.12.2005

Smt. Pulavarthi Naga Lakshmi Chandramathi.

----------Petitioner

Regional Provident Fund Commissioner-II and another.

----------Respondents

ORDER:

The Regional Provident Fund Commissioner-II, East Godavri District, Kakinada, initiated proceedings under the Provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') against an Agency, by name 'M/s.Sona', by issuing statutory notice. Earlier, the establishment was owned by one Mr.Narain Das Khem Chand Mankani, and the petitioner claims to have purchased it on 08.04.2004. On the ground that there was no response from the recipients of the notice, the 1st respondent passed an order, dated 04.08.2005, determining the liability of the subscriber i.e., M/s.Sona. The 2nd respondent, in turn, took necessary steps for recovery of the amount.

When the petitioner came to know about these developments, she filed an application before the 1st respondent together with an affidavit under Section 7-A (4) of the Act. The 1st respondent passed an order, dated 30.11.2005, rejecting the application of the petitioner. Hence, this Writ Petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

On account of the transfer of the establishment, which is under obligation to

pay the contribution, some communication gap has taken place, in the matter of initiation of proceedings under the Act. It is not in dispute that the establishment i.e., M/s.Sona, was covered under the Act. The dispute related to a particular period i.e, from May 2004 to April 2005. It is almost about this time that the transfer is said to have taken place in relation to the establishment. Things would have altogether different, had the transfer been brought to the notice of the 1st respondent. For one reason or the other, neither the transfer was intimated to the respondents nor the necessary intimation was furnished, when the notice was served in the proceedings.

Be that as it may, once the petitioner had approached the respondents with an application, narrating the relevant facts, necessary correctives ought to have been made. It is not as if the petitioner is avoiding the liability as a whole. The petitioner states that ever since she has taken over the establishment, the number of employees is less than twenty and in that view of the matter, the Act does not apply. These are the things, which need to be examined. Instead of rejecting the application of the petitioner on technical grounds, the 1st respondent should have verified the relevant facts and pass fresh orders.

Hence, the Writ Petition is allowed and the order under challenge is set aside. The 1st respondent is directed to consider the matter afresh, duly taking into account, the explanation offered by the petitioner. Till such time, the liability fastened against the petitioner through proceedings, dated 04.08.2005, shall not be enforced. There shall be no order as to costs.

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29.12.2005

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